

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

KENNETH PARKER,

Plaintiff,

V.

UNITED STATES DISTRICT COURT,)
WESTERN DISTRICT OF)
MISSOURI, et al.,)

Defendants.

No. 4:11CV167 RWS

MEMORANDUM AND ORDER

This matter is before the Court upon the pleading of plaintiff, which the Court will construe as a notice of removal/motion for change of venue. In his pleading, plaintiff seeks to transfer a federal prosecution¹ from the Western District of Missouri to this Court, and plaintiff further seeks to remove a state court prosecution² to this Court. The Court lacks subject matter jurisdiction over the pleading, and the Court will summarily dismiss it.

To the extent that plaintiff seeks to transfer his Western District case to this Court, this Court lacks jurisdiction because only the presiding court may transfer a case. See 28 U.S.C. § 1412.

¹United States v. Parker, 2:10CR4055-FJG (W.D. Mo.).

²State v. Parker, 10SL-CR08721 (21st Judicial Circuit, St. Louis County).

A state court prosecution may be removed to a district court pursuant to 28 U.S.C. § 1443(1). Title 28 U.S.C. § 1443 states:

Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof . . .

To demonstrate that removal is proper under § 1443(1), a defendant “must show that he relies upon a law providing for equal civil rights stated in terms of racial equality.” Neal v. Wilson, 112 F.3d 351, 355 (8th Cir. 1997). “Removal is warranted only if it can be predicted by reference to a law of general application that the defendant will be denied or cannot enforce the specified federal rights in the state courts.” Id. (quoting Georgia v. Rachel, 384 U.S. 780, 800 (1966)). Removal is not warranted if a defendant’s claim is that the state courts do not respect and will not enforce his federal rights. Id.

Plaintiff has not met the stringent requirements of § 1443. He has not shown that he relies on a law providing for equal civil rights stated in terms of racial equality. Nor has he shown that there is a state law preventing him from raising his federal claims in state court. As a result, the Court lacks jurisdiction over plaintiff’s

attempt to remove his state court prosecution to this Court. See Denson v. Williams, 341 F. Supp. 180, 182 (D.C. Tex. 1972).

Title 28 U.S.C. § 1447(c) states: “If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.”

In the alternative, plaintiff filed his notice of removal along with a motion to proceed in forma pauperis. Title 28 U.S.C. § 1915(e) mandates that the Court must dismiss an action filed in forma pauperis if it is frivolous or malicious. For the reasons stated above, the Court finds that the arguments raised in the notice of removal are legally frivolous. Consequently, this action should also be remanded as frivolously removed, pursuant to 28 U.S.C. § 1915(e).

Accordingly,

IT IS HEREBY ORDERED that plaintiff’s motion to proceed in forma pauperis [#3] is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff shall pay an initial partial filing fee of \$19.83.

IT IS FURTHER ORDERED that plaintiff’s request to transfer United States v. Parker, 2:10CR4055-FJG (W.D. Mo.) from the Western District of Missouri to this Court is **DENIED**.

IT IS FURTHER ORDERED that this action is **DISMISSED** for lack of jurisdiction.

IT IS FURTHER ORDERED that State v. Parker, 10SL-CR08721 (21st Judicial Circuit, St. Louis County), is **REMANDED** to the Circuit Court for St. Louis County.

IT IS FURTHER ORDERED that the Clerk of Court shall mail a certified copy of this Order to the clerk of the state court, with citation to State v. Parker, 10SL-CR08721.

IT IS HEREBY CERTIFIED that an appeal from this Order would not be taken in good faith. 28 U.S.C. § 1915(a)(3).

Dated this 1st day of March, 2011.

A handwritten signature in cursive script, appearing to read "Rodney W. Sippe", is written over a horizontal line.

RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE